

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

Rule Information Sheet

Updates to the Identification of Ignitable Hazardous Waste
LSA Document #22-216

Overview

The Indiana Department of Environmental Management (IDEM) is proposing amendments to Indiana's hazardous waste rules at 329 IAC 3.1-6-1 that include the incorporation by reference of recent updates to the identification of liquid waste as an ignitable hazardous waste. The rule amendments are primarily related to the incorporation by reference of federal hazardous waste rules and no other amendments are proposed in this rulemaking.

The federal requirements proposed for incorporation by reference were included in an United States Environmental Protection Agency (U.S. EPA) final rule that published in the Federal Register on July 7, 2020. The main purpose of the U.S. EPA final rule is to modernize the test methods for measuring the flash point of a liquid waste when determining if the liquid waste is an ignitable hazardous waste. The amendments mainly eliminate the test method requirements to use mercury-containing thermometers as a temperature-measuring device. Other amendments include greater clarity to hazardous waste identification, additional flexibility in testing requirements, improved environmental compliance, and enhanced protection of human health and the environment. These revisions are considered neither more nor less stringent than the current requirements for the subject matter, but instead provide additional compliance options. While states with authorized hazardous waste programs are not required to adopt the revisions, Indiana is adopting them to provide compliance flexibility and potential cost savings for regulated entities.

Affected Persons

The main entities potentially affected by this rulemaking include commercial laboratories and government laboratories that conduct testing for the determination of ignitable hazardous waste. Laboratories that use the updated flash point methods or mercury thermometers are both potentially impacted.

Reasons for the Rule

The main reason for this rulemaking is to amend Indiana's hazardous waste rules to include recent updates to federal hazardous waste rules. Because IDEM administers an authorized state hazardous waste program with the approval of the U.S. EPA, IDEM must adopt state hazardous waste rules that are at least as stringent as the federal rules. In some situations, IDEM will adopt federal rules that are less stringent than existing state rules to maintain consistency with the federal rules and offer available compliance alternatives. The proposed rule includes federal hazardous waste rules that are neither more stringent nor less stringent than existing rules on the subject matter, but offer additional compliance options for regulated entities. After adoption of

the proposed rule, Indiana's authorized hazardous waste program will include consistent requirements for the identification of liquid waste as an ignitable hazardous waste.

For this rulemaking, IDEM is using the abbreviated rulemaking process authorized in IC 13-14-9-7 because the rulemaking only proposes the incorporation by reference of a recent U.S. EPA final rule that amends hazardous waste requirements and does not include any additional amendments. The policy alternatives available to IDEM are so limited that the first notice of comment period would provide no substantial benefit to the environment or persons to be regulated or otherwise affected by the proposed rule.

Economic Impact of the Rule

The proposed rule only includes the incorporation by reference of federal rules without additional state-specific requirements, so any potential fiscal impact derives from the federal rules. Because the federal rules primarily provide additional compliance options rather than impose new, stricter requirements on regulated entities, the proposed rule creates cost saving opportunities instead of adding compliance costs compared to the current requirements. These cost savings are for entities located in all states and territories rather than only Indiana because the federal regulatory impact analysis provides information for all affected entities without a state-by-state analysis. The total annualized cost savings for all affected entities may range from \$78,500 to \$500,000, depending upon the discount rate (3% or 7%) and the total amount of tests conducted by the laboratories. These cost savings are based on reduced compliance costs for each test conducted and lower annual maintenance costs compared to the existing compliance costs for the test methods for ignitable liquid hazardous waste.

The rulemaking also includes some qualitative benefits from the potential reduction in use of mercury-containing thermometers. Because the updated test methods do not require the use of mercury-containing thermometers, the use of these thermometers may decline over time and reduce the likelihood of mercury releases. Mercury has various human health and environmental impacts, such as neurodevelopment effects on humans and toxic bioaccumulation in the natural environment. However, these benefits are difficult to quantify due to the unpredictable nature of mercury releases and the relative risk of each release.

Scheduled Board Action and Hearings

First Public Hearing: September 14, 2022, at 1:30 p.m., at the Indiana Government Center South, 10 North Senate Avenue, Conference Room A, Indianapolis, Indiana.

Second Public Hearing: November 9, 2022, at 1:30 p.m., at the Indiana Government Center South, 10 North Senate Avenue, Conference Room A, Indianapolis, Indiana.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Dan Watts, Rules Development Branch, Office of Legal Counsel, at dwatts1@idem.in.gov, (317) 234-5345, or (800) 451-6027 (in Indiana).